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Internet Archive Loses Lawsuit Over E-Book Copyright Infringement. Here's What to Know

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A federal judge sided in favor of the four leading publishers in the U.S. who sued the Internet Archive for scanning and lending out numerous digital copies of copyrighted books for free during the early days of COVID-19.

Hachette Book Group, HarperCollins, John Wiley & Sons, and Penguin Random House all sued the nonprofit after it offered a National Emergency Library, a temporary book collection created from thousands of e-books that ran from March 24, 2020, to June 16, 2020. The Internet Archive says the emergency library was launched to help people who lost access to their physical libraries during the pandemic.

For the National Emergency Library, the Internet Archive was lending out multiple copies of a digital book at once, and the four publishers sued over 127 books in the collection. The Internet Archive said the National Emergency Library was legal under the fair use doctrine, publishers say the act was "mass copyright infringement."

U.S. District Court Judge John G. Koeltl agreed with the plaintiffs, saying that the Internet Archive was making "derivative" works by turning print books into e-books and distributing them. It no longer has the right to do so.

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"Libraries are more than the customer service departments for corporate database products. For democracy to thrive at global scale, libraries must be able to sustain their historic role in society—owning, preserving, and lending books," said Internet Archive founder Brewster Kahle. "This ruling is a blow for libraries, readers, and authors and we plan to appeal it."

Here's what to know about the case.

What is the Internet Archive?

The Internet Archive is a nonprofit that has built a "digital library" of websites, books, audio recordings, videos, images and other research for the general public. Through digital archives like their Wayback machine, people can access now-defunct sites from more than 25 years ago. The nonprofit has been digitizing books since 2005. To date, it scans more than 4,000 books a day in 18 locations around the world.

The Internet Archive, which creates e-books by scanning print versions, includes 3.6 million copyrighted books in its online database, according to the court opinion.

Of those millions, they offer free, downloadable books that were published before 1927. Other more modern books can only be borrowed from their Open Library, whose vision is to "make all the published works of humankind available to everyone in the world." Users only have to make a free account in order to borrow the digital copy of the book.

The nonprofit is also a member of a number of associations including the American Library Association and the international Federation of Library Associations and Institutions.

What did the Internet Archive argue?

Libraries have the right to lend physical books to users because of the first-sale doctrine, which gives individuals who own a copyrighted book the right to sell, display, or lend that copy.

Under the Internet Archive's regular model, it does not allow users to mass download e-books. Instead, it functions through "controlled digital lending," which allows "entit[ies] that own a physical book to scan that book and circulate [the] digitized title in place of [the] physical one in a controlled manner."

But controlled digital lending also requires that libraries only lend the number of copies it owns. The Internet Archive counts its own physical copy of a book, and up to one book copy owned by its partner libraries to dictate the number of e-books it can lend.

However, it was not using this practice during the pandemic, lending out more digital book copies than courts say it had rights to.

The Internet Archive contends that it did not engage in copyright infringement because of the doctrine of fair use. This doctrine says that usage for "purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright," per the court's opinion.

Koeltl ruled that Internet Archive's use of e-books did not adhere to these standards when rolling out the National Emergency Library, but also in its broader use of the lending library, saying there was nothing "transformative" about its use of e-books that gave it the right to "scan those books and lend the digital copies en masse.

"It's fair use defense rests on the notion that lawfully acquiring a copyrighted print book entitles the recipient to make an unauthorized copy and distribute it in place of the print book, so long as it does not simultaneously lend the print book," Koeltl added. "But no case or legal principle supports that notion. Every authority points the other direction."

The Internet Archive still has the right to scan and distribute public domain books.

How are people reacting to the case?

The Authors Guild, an organization that offers resources to professional writers varying from legal tips to defending authors' copyrights, tweeted on March 25 that it was "thrilled" by the court's decision.

"As we have long argued, scanning & lending books w/out permission or compensation is NOT fair use—it is theft & it devalues authors' works," it added.

The Guild also claimed that it approached the Internet Archive years ago to create a license for books used on the Open Library, but the nonprofit declined to work with the organization.

However, more than 300 prominent authors—including Naomi Klein, Neil Gaiman, Hanif Abdurraqib, Chuck Wendig, and Cory Doctorow—previously signed an open letter asking publishers and trade associations to cease the lawsuit in late September.

"Big Publishing would outlaw public libraries if it could — or at least make it impossible for libraries to buy and lend books as they have traditionally done, to enormous public benefit — and its campaign against the Internet Archive is a step toward that goal," said co-founder of News Co/Lab, an initiative to elevate news literacy, at Arizona State University, Dan Gillmor.

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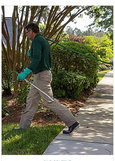

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